



Rep. Angelo Saviano

Filed: 4/5/2005

09400HB1177ham001

LRB094 05055 RAS 44136 a

1 AMENDMENT TO HOUSE BILL 1177

2 AMENDMENT NO. _____. Amend House Bill 1177 on page 1,
3 immediately below line 25, by inserting the following:

4 "Section 10. The Collection Agency Act is amended by
5 changing Sections 2.02, 2.04, 3, 4.5, 5, 6a, and 9 as follows:

6 (225 ILCS 425/2.02) (from Ch. 111, par. 2004)

7 (Section scheduled to be repealed on January 1, 2006)

8 Sec. 2.02. "Collection agency" or "agency" means any
9 person, association, partnership, ~~or~~ corporation, or legal
10 entity who, for compensation, either contingent or otherwise,
11 or for other valuable consideration, offers services to collect
12 an alleged delinquent debt.

13 (Source: P.A. 89-387, eff. 1-1-96.)

14 (225 ILCS 425/2.04) (from Ch. 111, par. 2005.1)

15 (Section scheduled to be repealed on January 1, 2006)

16 Sec. 2.04. Child support indebtedness.

17 (a) Persons, associations, partnerships, ~~or~~ corporations, or
18 or other legal entities engaged in the business of collecting
19 child support indebtedness owing under a court order as
20 provided under the Illinois Public Aid Code, the Illinois
21 Marriage and Dissolution of Marriage Act, the Non-Support of
22 Spouse and Children Act, the Non-Support Punishment Act, the
23 Illinois Parentage Act of 1984, or similar laws of other states

1 are not restricted (i) in the frequency of contact with an
2 obligor who is in arrears, whether by phone, mail, or other
3 means, (ii) from contacting the employer of an obligor who is
4 in arrears, (iii) from publishing or threatening to publish a
5 list of obligors in arrears, (iv) from disclosing or
6 threatening to disclose an arrearage that the obligor disputes,
7 but for which a verified notice of delinquency has been served
8 under the Income Withholding for Support Act (or any of its
9 predecessors, Section 10-16.2 of the Illinois Public Aid Code,
10 Section 706.1 of the Illinois Marriage and Dissolution of
11 Marriage Act, Section 4.1 of the Non-Support of Spouse and
12 Children Act, Section 26.1 of the Revised Uniform Reciprocal
13 Enforcement of Support Act, or Section 20 of the Illinois
14 Parentage Act of 1984), or (v) from engaging in conduct that
15 would not cause a reasonable person mental or physical illness.
16 For purposes of this subsection, "obligor" means an individual
17 who owes a duty to make periodic payments, under a court order,
18 for the support of a child. "Arrearage" means the total amount
19 of an obligor's unpaid child support obligations.

20 (a-5) A collection agency may not impose a fee or charge,
21 including costs, for any child support payments collected
22 through the efforts of a federal, State, or local government
23 agency, including but not limited to child support collected
24 from federal or State tax refunds, unemployment benefits, or
25 Social Security benefits.

26 No collection agency that collects child support payments
27 shall (i) impose a charge or fee, including costs, for
28 collection of a current child support payment, (ii) fail to
29 apply collections to current support as specified in the order
30 for support before applying collection to arrears or other
31 amounts, or (iii) designate a current child support payment as
32 arrears or other amount owed. In all circumstances, the
33 collection agency shall turn over to the obligee all support
34 collected in a month up to the amount of current support

1 required to be paid for that month.

2 As to any fees or charges, including costs, retained by the
3 collection agency, that agency shall provide documentation to
4 the obligee demonstrating that the child support payments
5 resulted from the actions of the agency.

6 After collection of the total amount or arrearage,
7 including statutory interest, due as of the date of execution
8 of the collection contract, no further fees may be charged.

9 (a-10) The Department of Professional Regulation shall
10 determine a fee rate of not less than 25% but not greater than
11 35%, based upon presentation by the licensees as to costs to
12 provide the service and a fair rate of return. This rate shall
13 be established by administrative rule.

14 Without prejudice to the determination by the Department of
15 the appropriate rate through administrative rule, a collection
16 agency shall impose a fee of not more than 29% of the amount of
17 child support actually collected by the collection agency
18 subject to the provisions of subsection (a-5). This interim
19 rate is based upon the March 2002 General Account Office report
20 "Child Support Enforcement", GAO-02-349. This rate shall apply
21 until a fee rate is established by administrative rule.

22 (b) The Department shall adopt rules necessary to
23 administer and enforce the provisions of this Section.

24 (Source: P.A. 93-896, eff. 8-10-04.)

25 (225 ILCS 425/3) (from Ch. 111, par. 2006)

26 (Section scheduled to be repealed on January 1, 2006)

27 Sec. 3. A person, association, partnership, ~~or~~
28 corporation, or other legal entity acts as a collection agency
29 when he or it:

30 (a) Engages in the business of collection for others of any
31 account, bill or other indebtedness;

32 (b) Receives, by assignment or otherwise, accounts, bills,
33 or other indebtedness from any person owning or controlling 20%

1 or more of the business receiving the assignment, with the
2 purpose of collecting monies due on such account, bill or other
3 indebtedness;

4 (c) Sells or attempts to sell, or gives away or attempts to
5 give away to any other person, other than one registered under
6 this Act, any system of collection, letters, demand forms, or
7 other printed matter where the name of any person, other than
8 that of the creditor, appears in such a manner as to indicate,
9 directly or indirectly, that a request or demand is being made
10 by any person other than the creditor for the payment of the
11 sum or sums due or asserted to be due;

12 (d) Buys accounts, bills or other indebtedness with
13 recourse and engages in collecting the same; or

14 (e) Uses a fictitious name in collecting its own accounts,
15 bills, or debts with the intention of conveying to the debtor
16 that a third party has been employed to make such collection.

17 (Source: P.A. 83-1539.)

18 (225 ILCS 425/4.5)

19 (Section scheduled to be repealed on January 1, 2006)

20 Sec. 4.5. Unlicensed practice; violation; civil penalty.

21 (a) Any person who practices, offers to practice, attempts
22 to practice, or holds oneself out to practice as a collection
23 agency without being licensed under this Act shall, in addition
24 to any other penalty provided by law, pay a civil penalty to
25 the Department in an amount not to exceed \$5,000 for each
26 offense as determined by the Department. The civil penalty
27 shall be assessed by the Department after a hearing is held in
28 accordance with the provisions set forth in this Act regarding
29 the provision of a hearing for the discipline of a licensee.

30 (b) The Department has the authority and power to
31 investigate any and all unlicensed activity. In addition to
32 taking any other action provided under this Act, whenever the
33 Department has reason to believe a person, association,

1 partnership, corporation, or other legal entity has violated
2 any provision of subsection (a) of this Section, the Department
3 may issue a rule to show cause why an order to cease and desist
4 should not be entered against that person, association,
5 partnership, corporation, or other legal entity. The rule shall
6 clearly set forth the grounds relied upon by the Department and
7 shall provide a period of 7 days from the date of the rule to
8 file an answer to the satisfaction of the Department. Failure
9 to answer to the satisfaction of the Department shall cause an
10 order to cease and desist to be issued immediately.

11 (c) The civil penalty shall be paid within 60 days after
12 the effective date of the order imposing the civil penalty. The
13 order shall constitute a judgment and may be filed and
14 execution had thereon in the same manner as any judgment from
15 any court of record.

16 (Source: P.A. 89-474, eff. 6-18-96.)

17 (225 ILCS 425/5) (from Ch. 111, par. 2008)

18 (Section scheduled to be repealed on January 1, 2006)

19 Sec. 5. Application for registration shall be made to the
20 Director on forms provided by the Department, shall be
21 accompanied by the required fee and shall state:

22 (1) The applicant's name and address;

23 (2) the names and addresses of the officers of the
24 collection agency and, if the collection agency is a
25 corporation, the names and addresses of all persons owning 10%
26 or more of the stock of such corporation, if the collection
27 agency is a partnership, the names and addresses of all
28 partners of the partnership holding a 10% or more interest in
29 the partnership, and, if the collection agency is a limited
30 liability company, the names and addresses of all members
31 holding 10% or more interest in the limited liability company;
32 and

33 (3) Such other information as the Department may deem

1 necessary.

2 (Source: P.A. 81-1381.)

3 (225 ILCS 425/6a) (from Ch. 111, par. 2009a)

4 (Section scheduled to be repealed on January 1, 2006)

5 Sec. 6a. Any registered collection agency whose
6 certificate of registration has expired may have the
7 certificate of registration restored by making application to
8 the Department and filing proof acceptable to the Department of
9 fitness to have the certificate of registration restored, and
10 by paying the required restoration fee.

11 However, any registered collection agency whose
12 certificate of registration has expired while the individual
13 registered or while a shareholder, partner, or member owning
14 50% or more of the shares of stock in a registered corporation
15 has expired while he has been engaged (1) in federal service on
16 active duty with the Army of the United States, the United
17 States Navy, the Marine Corps, the Air Force, the Coast Guard,
18 or the State Militia called into the service or training of the
19 United States of America, or (2) in training or education under
20 the supervision of the United States preliminary to induction
21 into the military service, may have his certificate of
22 registration restored or reinstated without paying any lapsed
23 renewal fees, restoration fee or reinstatement fee if within 2
24 years after termination of such service, training or education
25 other than by dishonorable discharge he furnishes the
26 Department with an affidavit to the effect that he has been so
27 engaged and that his service, training or education has been so
28 terminated.

29 (Source: P.A. 84-1299.)

30 (225 ILCS 425/9) (from Ch. 111, par. 2012)

31 (Section scheduled to be repealed on January 1, 2006)

32 Sec. 9. (a) The Department may refuse to issue or renew, or

1 may revoke, suspend, place on probation, reprimand or take
2 other disciplinary action as the Department may deem proper,
3 including fines not to exceed \$5,000 for a first violation and
4 not to exceed \$10,000 for a second or subsequent violation
5 ~~\$1,000 per licensee per complaint~~, for any one or any
6 combination of the following causes:

7 (1) Violations of this Act or of the rules promulgated
8 hereunder.

9 (2) Conviction of the collection agency or the
10 principals of the agency of any crime under the laws of any
11 U.S. jurisdiction which is a felony, a misdemeanor an
12 essential element of which is dishonesty, or of any crime
13 which directly relates to the practice of the profession.

14 (3) Making any misrepresentation for the purpose of
15 obtaining a license or certificate.

16 (4) Habitual or excessive use or addiction to alcohol,
17 narcotics, stimulants or any other chemical agent or drug
18 which results in the inability to practice with reasonable
19 judgment, skill, or safety by any of the principals of a
20 collection agency.

21 (5) Discipline by another U.S. jurisdiction or foreign
22 nation, if at least one of the grounds for the discipline
23 is the same or substantially equivalent to those set forth
24 in this Act.

25 (6) A finding by the Department that the licensee,
26 after having his license placed on probationary status, has
27 violated the terms of probation.

28 (7) Practicing or attempting to practice under a name
29 other than the name as shown on his or her license or any
30 other legally authorized name.

31 (8) A finding by the Federal Trade Commission that a
32 licensee violated the Federal Fair Debt and Collection Act
33 or its rules.

34 (9) Failure to file a return, or to pay the tax,

1 penalty or interest shown in a filed return, or to pay any
2 final assessment of tax, penalty or interest, as required
3 by any tax Act administered by the Illinois Department of
4 Revenue until such time as the requirements of any such tax
5 Act are satisfied.

6 (10) Using or threatening to use force or violence to
7 cause physical harm to a debtor, his family or his
8 property.

9 (11) Threatening to instigate an arrest or criminal
10 prosecution where no basis for a criminal complaint
11 lawfully exists.

12 (12) Threatening the seizure, attachment or sale of a
13 debtor's property where such action can only be taken
14 pursuant to court order without disclosing that prior court
15 proceedings are required.

16 (13) Disclosing or threatening to disclose information
17 adversely affecting a debtor's reputation for credit
18 worthiness with knowledge the information is false.

19 (14) Initiating or threatening to initiate
20 communication with a debtor's employer unless there has
21 been a default of the payment of the obligation for at
22 least 30 days and at least 5 days prior written notice, to
23 the last known address of the debtor, of the intention to
24 communicate with the employer has been given to the
25 employee, except as expressly permitted by law or court
26 order.

27 (15) Communicating with the debtor or any member of the
28 debtor's family at such a time of day or night and with
29 such frequency as to constitute harassment of the debtor or
30 any member of the debtor's family. For purposes of this
31 Section the following conduct shall constitute harassment:

32 (A) Communicating with the debtor or any member of
33 his or her family in connection with the collection of
34 any debt without the prior consent of the debtor given

1 directly to the debt collector, or the express
2 permission of a court of competent jurisdiction, at any
3 unusual time or place or a time or place known or which
4 should be known to be inconvenient to the debtor. In
5 the absence of knowledge of circumstances to the
6 contrary, a debt collector shall assume that the
7 convenient time for communicating with a consumer is
8 after 8 o'clock a.m. and before 9 o'clock p.m. local
9 time at the debtor's location.

10 (B) The threat of publication or publication of a
11 list of consumers who allegedly refuse to pay debts,
12 except to a consumer reporting agency.

13 (C) The threat of advertisement or advertisement
14 for sale of any debt to coerce payment of the debt.

15 (D) Causing a telephone to ring or engaging any
16 person in telephone conversation repeatedly or
17 continuously with intent to annoy, abuse, or harass any
18 person at the called number.

19 (16) Using profane, obscene or abusive language in
20 communicating with a debtor, his or her family or others.

21 (17) Disclosing or threatening to disclose information
22 relating to a debtor's indebtedness to any other person
23 except where such other person has a legitimate business
24 need for the information or except where such disclosure is
25 regulated by law.

26 (18) Disclosing or threatening to disclose information
27 concerning the existence of a debt which the debt collector
28 knows to be reasonably disputed by the debtor without
29 disclosing the fact that the debtor disputes the debt.

30 (19) Engaging in any conduct which the Director finds
31 was intended to cause and did cause mental or physical
32 illness to the debtor or his or her family.

33 (20) Attempting or threatening to enforce a right or
34 remedy with knowledge or reason to know that the right or

1 remedy does not exist.

2 (21) Failing to disclose to the debtor or his or her
3 family the corporate, partnership or proprietary name, or
4 other trade or business name, under which the debt
5 collector is engaging in debt collections and which he or
6 she is legally authorized to use.

7 (22) Using any form of communication which simulates
8 legal or judicial process or which gives the appearance of
9 being authorized, issued or approved by a governmental
10 agency or official or by an attorney at law when it is not.

11 (23) Using any badge, uniform, or other indicia of any
12 governmental agency or official except as authorized by
13 law.

14 (24) Conducting business under any name or in any
15 manner which suggests or implies that a debt collector is
16 bonded if such collector is or is a branch of or is
17 affiliated with any governmental agency or court if such
18 collector is not.

19 (25) Failing to disclose, at the time of making any
20 demand for payment, the name of the person to whom the
21 claim is owed and at the request of the debtor, the address
22 where payment is to be made and the address of the person
23 to whom the claim is owed.

24 (26) Misrepresenting the amount of the claim or debt
25 alleged to be owed.

26 (27) Representing that an existing debt may be
27 increased by the addition of attorney's fees,
28 investigation fees or any other fees or charges when such
29 fees or charges may not legally be added to the existing
30 debt.

31 (28) Representing that the debt collector is an
32 attorney at law or an agent for an attorney if he is not.

33 (29) Collecting or attempting to collect any interest
34 or other charge or fee in excess of the actual debt or

1 claim unless such interest or other charge or fee is
2 expressly authorized by the agreement creating the debt or
3 claim unless expressly authorized by law or unless in a
4 commercial transaction such interest or other charge or fee
5 is expressly authorized in a subsequent agreement. If a
6 contingency or hourly fee arrangement (i) is established
7 under an agreement between a collection agency and a
8 creditor to collect a debt and (ii) is paid by a debtor
9 pursuant to a contract between the debtor and the creditor,
10 then that fee arrangement does not violate this Section
11 unless the fee is unreasonable. The Department shall
12 determine what constitutes a reasonable collection fee.

13 (30) Communicating or threatening to communicate with
14 a debtor when the debt collector is informed in writing by
15 an attorney that the attorney represents the debtor
16 concerning the claim, unless authorized by the attorney. If
17 the attorney fails to respond within a reasonable period of
18 time, the collector may communicate with the debtor. The
19 collector may communicate with the debtor when the attorney
20 gives his consent.

21 (31) Engaging in dishonorable, unethical, or
22 unprofessional conduct of a character likely to deceive,
23 defraud, or harm the public.

24 (b) The Department shall deny any license or renewal
25 authorized by this Act to any person who has defaulted on an
26 educational loan guaranteed by the Illinois State Scholarship
27 Commission; however, the Department may issue a license or
28 renewal if the person in default has established a satisfactory
29 repayment record as determined by the Illinois State
30 Scholarship Commission.

31 No debt collector while collecting or attempting to collect
32 a debt shall engage in any of the Acts specified in this
33 Section, each of which shall be unlawful practice.

34 (Source: P.A. 91-768, eff. 1-1-01.)".